

Internal Revenue Service

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Date:

January 29, 2010

Taxpayer

Country

Partnership

Year 1

Year 2

Dear :

This is in response to your request, as revised, seeking a ruling that Taxpayer is not an insurance company for purposes of the Internal Revenue Code.

FACTS

Taxpayer represents as follows:

Taxpayer was formed in Year 1 in Country to operate in the same role as (though not as a successor-in-interest for legal purposes) Partnership. Partnership was the taxpayer in Technical Advice Memorandum 6910090950A, which concluded that Partnership should be classified as a partnership for Federal tax purposes and file its tax return using Form 1065, U.S. Return of Partnership Income (Form 1065)¹. Partnership did so through its last year of operation, Year 2.

¹ Because § 7701(a)(3) in effect at the time provided that the term “‘corporation’ includes ...insurance companies”, the implication of the technical advice memorandum’s conclusion is that Partnership was not an insurance company.

Taxpayer is composed of several entities ("Members"). Some of the Members of Taxpayer are wholly-owned subsidiaries of a common parent; others are Members of that parent's affiliated group of corporations included in a consolidated return. All Members engage in the business of underwriting insurance risks.

Members other than Taxpayer have entered into an agreement ("Agreement") that in essence creates a reinsurance pool.² Each Member agreed to cede a specified percentage of the insurance risk it underwrites to this pool and to assume a specified percentage of the aggregate risk in the pool. Taxpayer is not a party to the Agreement.

Taxpayer is licensed in Country as an "insurance manager". Taxpayer's chartering document indicates that the purpose and business of Taxpayer is

to act as representative of each [Member] and to do all things necessary or incidental to the conduct of all kinds of insurance and reinsurance business which [the Member] now is or hereafter may be authorized to transact ... to pool and share all such insurance and reinsurance business written or renewed ... for the account of any or all of the [Members] ... so that ... shall be automatically reinsured in the other [Members] according to the proportions so set forth; and to carry on any other lawful activity which shall be incidental to the foregoing.

Taxpayer represents that it does not assume insurance risks or obligations in its own name; it does not issue in its own name insurance or annuity contracts nor does it reinsure contracts issued by others. Rather, Taxpayer represents that it provides agency and administrative services to the Members, functioning as something of a 'back office' for its Members by performing such functions as developing business strategy, developing underwriting and claims administration guidelines, accepting premiums and paying losses, and managing regulatory compliance.

Because Taxpayer performs functions and has a role essentially identical to that of Partnership, it too has been filing a Form 1065 since Year 1.

REQUESTED RULING

² See S.S. Huebner et al, Property and Liability Insurance 573 (3rd ed. 1976) ("Reinsurance pools are share or participating arrangements whereby a number of insurers (varying from as many as 10 to 40 in some of the leading examples of such arrangements in marine insurance) arrange among themselves to share all insurance on a given commodity or type of business or on all business within a given territory on the basis of certain agreed proportions. Risks are accepted by the manager for the pool or syndicate, and are automatically distributed among all the insurers, each taking its allotted percentage.").

Taxpayer requests a ruling that it is not an “insurance company” as defined by §§ 816(a) and 831(c) or for purposes of § 7701(a)(3).

LAW AND ANALYSIS

For purposes of the Internal Revenue Code, § 7701(a)(3) defines the term corporation to include insurance companies. Insurance companies fall into one of two categories: life insurance companies or insurance companies other than life insurance companies.

Section 831(a) imposes taxes on the taxable income of every insurance company other than a life insurance company. Section 831(c) provides that for purposes of § 831 the term “insurance company” has the meaning given such term by § 816(a). Section 816(a) in turn provides that the term “insurance company” means any company more than half the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

The standard articulated in § 816(a) was adopted in 1984 and imported to § 831 through the addition of § 831(c) by the Pension Funding Equity Act of 2004, Pub. L. No. 108-218, § 206(c), 118 Stat. 596, 611 (2004) (“the Act”). Prior to the Act, the working definition of an insurance company other than a life insurance company was “a company whose primary and predominant business activity during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.” See, e.g., § 1.801-3(a)(1) of the Income tax Regulations; Bowers v. Lawyers Mortgage Co., 285 U.S. 182, 188 (1932) (“...the character of the business actually done in the tax years determines whether it was taxable as an insurance company.”). The Act’s Conference Report indicates the purpose of § 206(c) was to conform the definition of “insurance company” in the context of insurance companies other than life insurance companies to that regarding life insurance companies, and as such “adopt[ed] a stricter and more precise standard than the ‘primary and predominant business activity’ test contained in Treasury Regulations.” H.R. Rep. No. 108-457 at 50 (2004).

Rev. Rul. 83-132, 1983-2 C.B. 270, addressed a noncorporate business entity that was a member of an insurance exchange that was created under state law which allowed insurers organized in other than corporate form to participate. The primary and predominant business of the member was the underwriting of insurance risks typically underwritten by insurance companies other than life insurance companies. Because the member’s primary and predominant business activity was underwriting insurance risks, the ruling held that the noncorporate business entity was an insurance company and therefore a corporation within the meaning of § 7701(a)(3) and taxable as a corporation under subchapter L.³

³ The ruling does not address the tax status of the exchange. The ruling caveats that “a standard reinsurance arrangement under which one company (reinsurer) accepts all or part of the risk of loss of another insurance company (reinsured) will not be considered to be, or give rise to, a separate entity.”

Here, Taxpayer is licensed as an “insurance manager”. While it performs many, if not all, of the administrative functions underpinning the operation of an insurance company, Taxpayer does not assume the risk of loss on any insurance contracts; Taxpayer does not issue any insurance or annuity contracts or reinsure risks underwritten by insurance companies. Accordingly, Taxpayer is not an insurance company within the meaning of § 831(c).

RULING

Taxpayer is not an insurance company as defined in §§ 816(a) and 831(c) or for purposes of § 7701(a)(3).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter; no opinion is expressed as to the correct classification of Taxpayer for Federal income tax purposes.

This letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material so submitted and it is subject to verification on examination.

This ruling is directed only to Taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/S/

Donald J. Drees, Jr.
Senior Technician Reviewer
(Financial Institutions & Products)